

# COMMITTEE AMENDMENT FORM

DATE: 05/28/03

COMMITTEE      CITY UTILITIES      PAGE NUM. (S) 4

ORDINANCE I. D. #03-O-0781      SECTION (S) 7

RESOLUTION I. D. #03-R      PARA.

AMENDS THE LEGISLATION BY ADDING A NEW SECTION 7.

AMENDMENT DONE BY COUNCIL STAFF.

**AN AMENDED ORDINANCE BY CITY UTILITIES COMMITTEE**

**AN ORDINANCE TO AMEND VARIOUS SECTIONS OF CHAPTER 138 REGARDING STREETS, SIDEWALKS AND THE PUBLIC RIGHT-OF-WAY SO AS TO CLARIFY THE INTENT OF SPECIFIC SECTIONS CONTAINED THEREIN; TO REPEAL CONFLICTING SECTIONS; AND FOR OTHER PURPOSES.**

**WHEREAS**, it is the charge of the City Council to protect the health, safety, welfare, comfort and convenience of residents and visitors to the City of Atlanta, including maintaining a safe and convenient municipal street system and other Public Right-of-Way; and

**WHEREAS**, the City of Atlanta previously enacted a comprehensive Public Right-of-Way Ordinance to allow the City to otherwise manage its Public Right-of-Way in a manner as contemplated by the Federal Telecommunications Act of 1996; and

**WHEREAS**, based on observations of the City staff and comments from the industry, there is a need to clarify the intent of certain provisions and further set forth the responsibilities of those conducting activities in the Public Right-of-Way; and

**THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** That Section 138-65(1)(b) Construction Permits, which currently reads as follows:

Section 138-65(1)(b) Construction Permits – Persons desiring to conduct excavation work in the streets or Public Rights-of-Way including, but not limited to, any street cuts, boring activity and the placement or removal of conduits, manholes, cable, shall apply for a Construction Permit. Such permits shall be issued for a fee of Two Hundred Dollars (\$200.00) per permit. The permit fee shall include one hour of inspection by a Department of Public Works Inspector upon the completion construction activity. In addition, the City may charge an inspection fee of Fifty Dollars (\$50.00) per hour. However, where the Georgia Department of Transportation has primary permitting authority over a particular construction activity, the Permittee may show a copy of the GDOT permit upon application for a City permit, and the City permit fee and inspection fees shall be waived for that permit.

Is deleted hereby and is substituted in lieu thereof, a new subsection (1)(b) of Section 138-65, which shall read as follows when amended:

Section 138-65(1)(b) Construction Permits– Persons desiring to conduct excavation work in the streets or Public Rights-of-Way including, but not limited to, any street cuts, boring activity and the placement or removal of conduits, manholes, cable, shall apply for a Construction Permit. Such permits shall be

issued for a fee of Two Hundred Dollars (\$200.00) per permit. The permit fee shall include one hour of inspection by a Department of Public Works Inspector upon the completion construction activity. In addition, the City may charge an inspection fee of Fifty Dollars (\$50.00) per hour. However, where the Georgia Department of Transportation has primary permitting authority over a particular construction activity, the Permittee may show a copy of the GDOT permit upon application for a City permit, and the City permit fee and inspection fees shall be waived for that permit. To the extent that a Person pays or remits payment to the City pursuant to Section 138-127(h)(1) such payment shall be in lieu of permit fees and inspection fees.

**SECTION 2:** That Section 138-40(b)(2) Mandate to Place Facilities Underground, which currently reads as follows:

Section 138-40(b)(2) Mandate to Place Facilities Underground – The City may designate geographical areas in which facilities shall be placed underground subject to applicable state and federal law.

Is deleted hereby and is substituted in lieu thereof, a new Section 138-40(b)(2) shall read as follows when amended:

Section 138-40(b)(2) Mandate to Place Facilities Underground – The City may designate geographical areas in which facilities are preferred to be placed underground: provided however, that franchisees are not required to place transmission and distribution facilities underground when aerial facilities exist and that, where existing aerial facilities are being retired and removed from service, replacement will be made using underground construction if technically practical and economically feasible and subject to applicable state and federal law.

**SECTION 3:** That subsection 138-134 (1)(a), Terms and Conditions of Franchise, which currently reads as follows:

(a) the term of the Franchise, which shall not exceed two (2) years with the option of the City to renew for two (2) additional one (1) year terms:

Is deleted hereby and is substituted in lieu thereof, a new subsection (1)(a) to Section 138-134 which shall read as follows when amended:

(a) the term of the Franchise, which shall not exceed five (5) years with the option of the City to renew for two (2) additional one (1) year terms:

**SECTION 4:** That Section 138-127 (h)(1) Compensation, which currently reads as follows:

(1) Measure of Compensation-Telecommunication Franchisees and Revocable Licensees shall pay the City an annual franchise fee equal to three percent

(3%) of the franchisee's annual Gross Revenue, provided that a universal Service Provider shall pay the City a franchise fee equal to three percent (3%) of the Universal Service Provider's Gross Revenue, and further provided that in any calendar year that a Franchisee's Gross Revenue does not exceed \$500,000.00, the franchisee fee shall be \$15,000.00 per year.

Is deleted hereby and is substituted in lieu thereof, a new subsection (1) to Section 138-127 (h) (1) shall read as follows when amended:

- (1) Measure of Compensation -Telecommunication Franchisees and Revocable Licensees shall pay the City an annual franchise fee equal to three percent (3%) of the franchisee's annual Gross Revenue, provided that a Telecommunications Franchisee or Revocable Licensee shall not be required to pay more than 11 million dollars (\$11,000,000.00) in telephony franchise fees for the reasonable use and occupancy of the Rights-of-Way. The 11 million dollar cap will be increased annually, at the anniversary date of the execution of the agreement, by the rate of inflation, which will be measured by the percentage change in the Gross Domestic Product-Price Index ("GDP\_PPI"), which is the gross domestic product fixed weight price index calculated by the United States Department of Commerce. In addition, in any calendar year that a Telecommunication Franchisee's or Revocable Licensee's Gross Revenue does not exceed \$500,000.00, the telephony franchisee fee shall be \$15,000.00 per year.

**SECTION 5:** That Section 138-127(h)(7) regarding inspection and audits which currently reads:

- (7) Inspection and audit. The city reserves the right to audit the accuracy of the reports submitted for the purpose of insuring compliance with this article. Such audits shall be conducted by an auditor chosen by the city. In cases where the franchisee has failed to submit a certificate verifying gross revenue for two consecutive quarters, the costs of such audit shall be borne by the franchisee. In addition, should the audit reveal an understatement of gross revenue more than five percent by the franchisee and the city has received an underpayment of franchise fees, city shall receive the legal rate of interest on all such underpayments.

Is deleted hereby and is substituted in lieu thereof, a new subsection (7) to Section 138-127 (h) (7) shall read as follows when amended:

- (7) Inspection and audit. Each franchisee shall submit a certificate on a quarterly basis verifying and reporting its gross revenue to the city. The city reserves the right to audit or review the accuracy of the reports submitted for the purpose of insuring compliance with this article. Such audits or reviews shall be conducted by an auditor chosen by the city. In cases where the franchisee has failed to submit a certificate verifying gross revenue for two consecutive quarters the costs of such audit shall be borne by the franchisee. In addition, should the In cases where the audit or review reveals an understatement of gross revenue more than five ten percent by the franchisee, all reasonable costs and expenses of such audit or review shall be borne by the franchisee and the franchisee shall make full payment of the relevant obligation, including interest at the legal rate set forth in

O.C.G.A Section 7-4-2. Provided further that if, as a result of any audit or review conducted by the franchisee, it is determined that the franchisee has overpaid franchise fees to the city, then the city shall make full refund of the overpayment, including interest at the legal rate rate set forth in O.C.G.A Section 7-4-2, which may be in the form of a credit on future franchise fees, and the city has received an underpayment of franchise fees, city shall receive the legal rate of interest on all such underpayments.

**SECTION 6:** That Section 138-65 shall be amended by adding a new Section 138-65 (17) to read as follows:

Reservation of Rights- The City reserves the right, upon the review of its franchise application, to waive, modify or amend the various bonding, letter of credit, cash deposits and insurance requirements as set forth in Section 138-65, taking into account, among other factors, the financial stability of the Franchisee or Revocable Licensee and the past performance of the Franchisee or Revocable Licensee in the City's Right-of- Way.

**SECTION 7:** That Section 138-134 (a)(12) regarding Transfer of Interest which currently reads:

Provisions to monitor changes in control of the franchisee and require written notice prior to the assignment or other transfer of the franchise, or where required consent of, the City:

Is deleted hereby and is substituted in lieu thereof, a new subsection (a)(12) to Section 138-134 shall read as follows when amended:

Provisions to monitor changes in control of the franchisee and in the event the franchisee assigns, sells or otherwise disposes of the entirety of the rights and privileges in a Franchise Agreement, the assignee shall be obligated to negotiate an acceptable Franchise Agreement with the City.